UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/754,492	01/04/2001	G. Stephen LeGraw	M2062-700010	2903

37462   7590   09/17/2008
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ART UNIT	PAPER NUMBER
3692	

NOTIFICATION DATE	DELIVERY MODE
09/17/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _25 July 2008_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _61-125_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _61-125_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Status of Claims

1.   This action is in reply to the RCE filed on 25th of July 2008.

2.   Claims 61-125 are currently pending and have been examined.

3.   Claims 121-125 were newly added.

Continued Examination Under 37 CFR 1.114

4.   A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection.   Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.   Applicant's submission filed on 7/25/2008 has been entered.

Response to Arguments

5.   Applicant's arguments with respect to claims 61~125 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

6.   35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

        Claim 61 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

        Patent statute does not allow patents to be issued on particular business systems and method that depend for their operation on human intelligence alone. In case of claim 61, a method for trading information between companies is unpatentable as directed to nonstatutory

subject matter under 35 U.S.C. §101, since mental processes standing alone are not patentable,

even if they have practical applications. Claim 61 can be carried out by mental steps and do not

link to any of patentable statutory class. The claim 61, at issue do not use of machine and does

not describe process of manufacture or process for alteration of composition of matter, and since

claim instead cover use of mental processes to solve the steps of collecting data, sending data to

central location, updating data, determining data to send, sending the final data set to the user,

and thus seek to patent use of human intelligence in and of itself. As the PTO notes, "[t]he

Supreme Court has recognized only two instances in which such a method may qualify as a

section 101 process: when the process 'either [1] was tied to a particular apparatus or [2]

operated to change materials to a 'different state or thing. Ref: In re Comiskey, 84 USPQ2d

1670(Fed. Cir.2007).

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as
> set forth in section 102 of this title, if the differences between the subject matter sought to be
> patented and the prior art are such that the subject matter as a whole would have been obvious
> at the time the invention was made to a person having ordinary skill in the art to which said
> subject matter pertains. Patentability shall not be negatived by the manner in which the invention
> was made.

8.   The factual inquiries set forth in Graham **v.** John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966),

that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are

summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or
        nonobviousness.

Examiner's Note: The Examiner has pointed out particular references contained in the prior art

of record within the body of this action for the convenience of the Applicant. Although the

specified citations are representative of the teachings in the art and are applied to the specific

limitations within the individual claim, other passages and figures may apply.   Applicant, in

preparing the response, should consider fully the entire reference as potentially teaching all or

part of the claimed invention, as well as the context of the passage as taught by the prior art or

disclosed by the Examiner.

9.   Claims 61-125 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitzgerald (US

6,434,533 B1) in view of Kinker (US 4,023,013).

As per Claim 61:

Fitzgerald discloses a method for the exchange, analysis, and reporting of performance data in

businesses with time-dependent inventory comprising the steps of:

- *Collecting private company information from a user at a first location (Column 3, lines 50-*
  55), the private company information having an exchange data portion (Column 9, lines
  12-21).

- *Defining an exchange data set at the central location (Column 3, lines 23- 27)*

- *Updating the exchange data set using the exchange data portion (Column 7, lines 15-25)*

- *Determining an output data set from the exchange data set (Column 9 line*
  61- Column 10 line 6)

- *Transmitting the output data set from the central location to the user at the first location*
  via the network (Column 3, lines 28-32)

- *Wherein the private company is part of a commercial industry (Time Dependent Industry*
  Businesses; Column 3, lines 6-7), and the output data set includes statistical averages for
  the commercial industry (Figs 8, 9A, 9B)

Fitzgerald does not explicitly disclose the steps wherein the private company information

includes a confidential data portion, which includes confidential identifying information for a

private company that corresponds with the private company information and wherein the

exchange data portion is characterized by an absence of confidential identifying information for the private company.

- *Transmitting only the exchange data portion to a central location (Column 9, lines 18-20) via the network (Kinker, See at least Column 2, lines 54+)*

But the concept of dividing the data structure into two portions (public and nonpublic) is very well known in the computer art. This is also taught by Kinker where it describes the secret data and regular exchangeable data such as account number data. Portion of the secret data is kept by the sender and other "exchangeable data" is sent to the central location.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to include the method for processing performance data the ability to hold on to the non-public data and only transmit public data since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. This would greatly increase the security of the system.

As per Claim 62 and 63:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses wherein the step of transmitting only the exchange data portion to a central location includes the step of transmitting only the exchange data portion to a central location via a network and wherein the network includes an Internet communication link (Column 4, lines 1-2).

As per Claim 64:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the steps of:

- *Defining one or more groups (Column 3, lines 14-18; the reports are representative of similar business in a particular market area)* •

- *Determining one or more groups associated with the collected information (Column 3, lines 14-18; inherent in the statement that "businesses in a market area can reliably exchange daily performance data;" must be a way to determine the scope of the market area)*

As per Claim 65:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step of attaching the determined groups to the exchange data portion (See Fig 8; the members of the group are attached with the exchange portion).

As per Claim 66:

Re Claim 66: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step of defining the user as a qualified user (Column 6, lines 35-39 and Column 12 lines 11-13).

As per Claim 67:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step of defining the exchange data set as a qualified user exchange data set (Column 6, lines 35-39). The system "can be used to provide processed performance data only to customers that input data into the system."

As per Claim 68:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step wherein transmitting the output data set from the central location to user at the first location is performed via an Internet communication link (Column 4, lines 1-2).

As per Claim 69, 71, and 72:

Fitzgerald in view of Read discloses the claimed method supra and while not explicitly disclosing

the step comprising storing the output data set, the collected information and the confidential data

portion at the first location, the step of saving information on an individual computer is notoriously

well known in the art and would have been obvious to anyone of ordinary skill. Furthermore,

Fitzgerald notes that the user interface includes a CPU and associated memory, from which

storage capabilities would be obvious. This is also shown by Kinker (see at least column 7, Line

6+) for the same motivation given by claim 61.

As per Claim 70:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step of storing the output data set at the central location (Column 8, lines 24-27).

As per Claim 73:

Fitzgerald in view of Read discloses the claimed method and Fitzgerald further discloses the step

of determining the output data set further comprises the steps of:

- *Defining a statistical model (FIG 8; Column 10, line 28 -Column 11 line 40)*

- *Generating a statistical data set using the exchange data set and the statistical model (FIG 8)*

- *Storing the statistical data set as the out put data set (Column 8, lines 22- 27)*

As per Claim 74:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step of receiving a second exchange data portion from a second user; updating the exchange

data set using the second exchange data portion; and transmitting the output to the second user

(Column 3, lines 47-55; "plurality of business entities;" each would have separate data relative to

their business to exchange).

As per Claim 75:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the steps of:

- *Defining a graphical user interface including a webpage (Column 6, lines 60-63) •*

- *Collecting information from the user via the webpage (Column 7, lines 11- 14)*

As per Claim 76:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step of accessing the central controller via the webpage using a login routine, wherein the

login routine determines whether a user is allowed to access the central controller (Column 7,

lines 3-10).

As per Claim 77:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step wherein transmitting the output data set to the user is performed at the completion of the

login routine (Column 7, lines 11-37)

As per Claim 78:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step of generating a graph from the output data set (Figs 9A and 9B).

As per Claim 79:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step wherein the step of collecting information from a user includes the step of collecting

benchmark information (Column 1, line 39 - Column 2 line 30). The invention of Fitzgerald is

designed to collect pertinent information from a plurality of business competing in a similar market

and to produce an output of an individual business' success (benchmark) in relation to its market (FIG 8).

As per Claim 80:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step wherein the benchmarking information is asset information (FIG 8, Column 10, lines 28-46). Fitzgerald uses the hotel industry as an example and in the benchmarking report in figure 8; the statistics are based upon the available hotel rooms (the asset of any hotel), and the derivatives thereof.

As per Claims 81-84:

Fitzgerald in view of Read discloses the claimed method supra and while not explicitly disclosing the steps wherein the asset information includes public business valuation information, private business valuation information, portfolio information or capital structure information, the system of Fitzgerald could easily be adapted to receive and output data that is relevant to any market. The hotel example is used (Column 1 line 38- Column 2 line 30), with information such as Occupancy and Average Daily Rate submitted and outputted as statistics relevant to that particular industry. However every industry is different, and depending upon the market on which the system is operating, the parameters of the system will change. It would have been obvious to anyone skilled in the ordinary art at the time of invention to adapt the system of Fitzgerald in view of Read in order to change the parameters submitted relative to the market, because performance measurements in one industry are often time inconsequential or non-existent in another industry and would therefore provide no relevant information for that market segment.

As per Claim 85:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step wherein the benchmarking information is performance information. Fitzgerald states that

ADR and Occupancy are "performance data" terms in the hotel industry (Column 2, lines 4-9), and these measurements are clearly used to benchmark individual hotels in the output report (Fig 8).

As per Claim 86:

Fitzgerald in view of Read discloses the claimed method supra and while not explicitly disclosing the step of collecting public company commercial information from a published public exchange market, this process is old and well known in the art and would have been obvious to anyone of ordinary skill. The mere fact that this is published information means that anyone can collect and analyze it, and this process has been done via a network for years. One would be motivated to add this feature to the disclosure of Fitzgerald in view of Read in order to create an even larger cache of industry information, in order to further locate the users position in the overall market.

As per Claim 87:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step wherein the statistical averages include at least one of average deal statistics, average valuation statistics, average collateral statistics, average operating performance statistics and average operating performance data (Figure 9A). Fitzgerald explicitly discloses ADR as a performance statistic (Column 2, lines 4-9), and the output shown in figure 9A shows the statistic averages of ADR for the market.

As per Claim 88:

Fitzgerald discloses a method for the exchange, analysis, and reporting of performance data in businesses with time-dependent inventory comprising the steps of:

- *Collecting commercial information via a webpage from a user, wherein the commercial data information relates to a private company in an industry (Column 3, lines 50-55)*

- *Generating a commercial data record from the commercial data information (Column 9, lines 12-21)*

- *Defining a commercial statistical analysis system having an exchange data set (Column 3, lines 23-27)*

- *Transmitting only the exchange subrecord via a network communication link to the commercial statistical analysis system (Column 9, lines 18-20)*

- *Updating the exchange data set using the exchange subrecord (Column 7, lines 15-25)*

- *Generating a commercial statistical data set for the industry using the commercial statistical analysis system (FIG 8), wherein the commercial data set includes statistical averages for the industry (FIG 9a, 9b)*

- *Transmitting the commercial statistical data set to the user (Column 3, lines 28-32)*

Fitzgerald does not explicitly disclose wherein the commercial data record includes a confidential subrecord that identifies a private company and wherein the commercial statistical data set is configured to protect an identity of the private company from other users with access to the commercial statistical data set.

- *Transmitting only the exchange subrecord (Kinker, See at least Column 2, lines 54+)*

But the concept of dividing the data structure into two portions (public and nonpublic) is very well known in the computer art. This is also taught by Kinker where it describes the secret data and regular exchangeable data such as account number data. Portion of the secret data is kept by the sender and other "exchangeable data" is sent to the central location.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to include the method for processing performance data the ability to hold on to the non-public data and only transmit public data since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. This would greatly increase the security of the system.

As per Claim 89:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step wherein transmitting the commercial data set from the commercial statistical analysis

system to the user is completed via the network communication link (Column 4, lines 1-2).

As per Claim 90-91:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step of storing the commercial statistical data set at the commercial statistical analysis system

(Column 8, lines 24-27).

As per Claim 92-93:

Fitzgerald in view of Read discloses the claimed method supra and while not explicitly disclosing

the step comprising storing the collected information at the location of the user and storing the

confidential sub record at the location of the user, the step of saving information on an individual

computer is notoriously well known in the art and would have been obvious to anyone of ordinary

skill. Furthermore, Fitzgerald notes that the user interface includes a CPU and associated

memory, from which storage capabilities would be obvious. This is also shown by Kinker (see at

least column 7, Line 6+) for the same motivation given by claim 88.

As per Claim 94:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step of:

- *Defining a statistical model (FIG 8; Column 10, line 28 -Column 11 line 40)*

- *Generating a commercial statistical data set using the exchange data set and the*

  statistical model (FIG 8, 9a, 9b)

As per Claim 95:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step of receiving a second exchange subrecord from a second user; and updating the

exchange data set using the second exchange subrecord (Column 3, lines 47-55; "plurality of

business entities;" each would have separate data relative to their business to exchange)

Re Claim 96: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald

further discloses the step of accessing the commercial statistical analysis system via the

webpage using a login routine, wherein the login routine determines whether a user is allowed to

access the commercial statistical analysis system (Column 7, lines 3-10).

As per Claim 97:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step wherein transmitting the commercial statistical data set to the user is performed at the

completion of the login routine (Column 7, lines 11-37)

As per Claim 98:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step of generating a graph of the commercial statistical data set (FIG 9a, 9b).

As per Claim 99:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step of collecting information from a user includes the step of collecting asset information (FIG

8, Column 10, lines 28-46). Fitzgerald uses the hotel industry as an example and in the

benchmarking report in figure 8; the statistics are based upon the available hotel rooms (the asset

of any hotel), and the derivatives thereof.

As per Claim 100 and 101:

Fitzgerald in view of Read discloses the claimed method supra and while not explicitly disclosing

wherein the asset information includes public business valuation, private business valuation and

other statistical information, the system of Fitzgerald could easily be adapted to receive and

output data that is relevant to any market. The hotel example is used (Column 1 line 38- Column

2 line 30), with information such as Occupancy and Average Daily Rate submitted and outputted

as statistics relevant to that particular industry. However every industry is different, and

depending upon the market on which the system is operating, the parameters of the system will

change. It would have been obvious to anyone skilled in the ordinary art at the time of invention to

adapt the system of Fitzgerald in order to change the parameters submitted relative to the

market, because performance measurements in one industry are often time inconsequential or

non-existent in another industry and would therefore provide no relevant information for that

market segment.

As per Claim 102:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step of determining whether the user is a qualified user (Column 6, lines 35-39 and Column

12 lines 11-13).

As per Claim 103:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step of defining a qualified user exchange data set, wherein the qualified user exchange data

set is allowed to be accessed only by the qualified user (Column 6, lines 35-39)

As per Claim 104:

Fitzgerald in view of Read discloses the claimed method supra and while not explicitly disclosing

the step of defining the exchange data set to include the qualified user exchange data set as a

subset of the exchange data set, it would have been obvious to anyone skilled in the ordinary art

for the system of Fitzgerald to create a broader data set, perhaps involving surrounding markets

in order to create a larger view of the particular industry. In this manner, a user can see not only

large- scale statistics, but local statistics of a particular market which would more accurately

reflect the position of the business.

As per Claim 105:

Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses

the step of defining the network communication link in include an Internet communication link

(Column 4, lines 1-2).

As per Claim 106:

Further system claim would have been obvious to perform previously rejected method claim 61

and is therefore rejected using the same art and rationale. Also the examiner will further address

argument for the following limitation:

- *Wherein the commercial statistical data set is defined by a lack of information identifying a source of the exchange subrecord.* (See at least Column 7, lines 3+).

This is also taught by Kinker where it talks about transmitting section of the secret data and

leaving a second part of the secret data behind. This is clearly the same concept of transmitting a

data lacking a non-public portion of the data. The motivation to combine is same as claim 61.

As per Claim 107:

Fitzgerald in view of Read discloses the claimed system supra and Fitzgerald further discloses

wherein the user is a qualified user and the commercial statistical data set is accessible only by

one or more qualified users (Column 6, lines 35- 39)

As per Claim 108:

Fitzgerald in view of Read discloses the claimed system supra and Fitzgerald further discloses wherein

- *A first user interface located at a first location with the user (FIG 1A, 200)*

- *Wherein the first user interface is in communication with the commercial information exchange system via the network, for transmitting the exchange record from the first user interface to the commercial information exchange system and for transmitting the commercial statistical data set to the first user from the commercial information exchange system (FIG la, lb)*

As per Claim 109:

Fitzgerald in view of Read discloses the claimed system supra and Fitzgerald further discloses wherein the network includes the Internet (Column 4, lines 1-2).

As per Claim 110:

Fitzgerald in view of Read discloses the claimed system supra and Fitzgerald further discloses wherein the exchange system controller further includes a web server (Column 4, lines 42-50)

As per Claim 111:

Fitzgerald in view of Read discloses the claimed system supra and Fitzgerald further discloses wherein the exchange system controller includes a query manager for managing queries between the user and the commercial information exchange system (Column 7, lines 11-14).

As per Claim 112:

Fitzgerald in view of Read discloses the claimed system supra and Fitzgerald further discloses wherein the exchange system controller includes a statistical model, wherein the commercial

statistical data set is generated using the exchange data set and the statistical model (Column 3, lines 23-27).

As per Claim 113~119:

Further computer readable medium claims would have been obvious to perform previously rejected method claims 61-62, 73-74, 76-77 and 82 respectively and are therefore rejected using the same art and rationale.

As per Claim 120:

Fitzgerald in view of Read discloses a method for the exchange, analysis, and reporting of performance data in businesses with time-dependent inventory comprising the steps of:

- *Collecting private company data information including business valuation and other statistical data via a webpage from a user associated with the private company wherein the private company is part of a commercial industry (Column 3, lines 14-22)*
- *Generating a private company data record from the private company data information (Column 3, lines 23-27), including an exchange subrecord (Column 9, lines 12-21)*
- *Defining a statistical analysis system having an exchange data set and at least one statistical model (Fig 8, Column 3, lines 23-27)*
- *Updating the exchange data set using the exchange subrecord (Column 7, lines 15-25)*
- *Storing the updated exchange data set to the statistical analysis system (Column 8, lines 24-27)*
- *Generating a private company statistical data set using the statistical analysis system based upon the updated exchange data set and the at least one statistical model, wherein the private company statistical data set includes statistical averages for the commercial industry, the statistical averages including at least one of average deal statistics, average valuation statistics, average collateral statistics, average operating performance statistics and average operating performance data (SEE FIG 8, 9a, 9b)*

- *Transmitting the private company statistical data set to one or more qualified users, wherein the qualified user is defined as a user who provides exchange sub records to the statistical analysis system (Column 6, lines 35-39).*

Fitgerald does not explicitly disclose:

- *Generating a private company data record from the private company data information, including a confidential subrecord and* (Kinker, Column 7, lines 28+, "...B-register data, generated by signal...").

- *Wherein the commercial statistical data set is configured to protect an identity of the private company from other users with access to the commercial statistical data set* (Kinker, Column 2, lines 8+).

- *Transmitting only the exchange subrecord to the statistical analysis system (Kinker, See at least Column 2, lines 54+)*

- *Storing the confidential subrecord at the location of the user; (See at Column 7, Line 6+)*

But the concept of dividing the data structure into two portions (public and nonpublic) is very well known in the computer art. This is also taught by Kinker where it describes the secret data and regular exchangeable data such as account number data. Portion of the secret data is kept by the sender and other "exchangeable data" is sent to the central location.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to include the method for processing performance data the ability to hold on to the non-public data and only transmit public data since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. This would greatly increase the security of the system.

As per Claim 121~125:

Fitgerald discloses the limitations as shown in the rejections above. Furthermore, Fitgerald also discloses the following limitations:

- *the exchange subrecord comprises statistical information sufficient to obtain a valuation of the private company. (See at least Column 1, Line 39+, performance data for hotel business)*

- *the commercial statistical data set enables another user to determine a valuation of the private company. (See at least Column 1, Line 39+, RevPAR)*

Conclusion

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Edward Chang** whose telephone number is **571.270.3092.** The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Kambiz Abdi** can be reached at **571.272.6702**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://portal.uspto.gov/external/portal/pair <http://pair-direct.uspto.gov >. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to **571-273-8300**.

Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window**:

Randolph Building

401 Dulany Street

Alexandria, VA 22314.

September 10, 2008
/Edward Chang/ Examiner, Art Unit 3692

/Harish T Dass/
Primary Examiner, Art Unit 3692